

December 20, 2006

**VIA E-MAIL & HAND DELIVERY**

Board of Supervisors of  
Fauquier County, Virginia  
c/o Renee Anderson  
Deputy Clerk  
10 Hotel Street  
Warrenton, Virginia 20186

**Re: Letter of Appeal, pursuant to Fauquier County Zoning Ordinance  
§ 2-406(6), of the Planning Commission's rejection of PPLT07-SC-006 and  
WVRP07-SC-003.**

Dear Board Members:

L & J Property, LLC ("L & J"), by counsel, pursuant to Zoning Ordinance Section 2-406-6, files this appeal from a disapproval of a preliminary cluster subdivision plan (PPLT07-SC-006: "Virginia Pines") by the Fauquier County Planning Commission on November 30<sup>th</sup>, 2006.

**BASIS OF APPEAL AND SUMMARY**

L & J submitted a by-right cluster subdivision on approximately two hundred five (205) acres of property in Scott District. The property is located on the side of the Bull Run Mountains. Prior to submitting the application, Applicant's representative met with the County Soil Scientist regarding the Type I Soils Map. The County Soils Scientist provided the applicant's representative with a draft of the Type I work map and advised the applicant's representative of the best location to cluster the lots. Attached hereto is a colored soils map of the property. Bull Run Mountain Road runs along the left-hand side. A County soils chart is attached to the color map of the property identifying the soils types and their characteristics as taken from the Fauquier County Soils Guide 5<sup>th</sup> Edition. The soils identified by the County Soils Scientist as the best soils for building purposes are colored green, and are located largely in the middle of the property.

The subdivision was designed to locate the cluster development in the soils best suited for residential construction, as recommended by the County Soils Scientist, prior to the subdivision preliminary plan. The filed preliminary plan meets all of the by-right standards set forth in the Subdivision Ordinance for preliminary plats at § 9-5. The only waiver requested is for the cul-de-sac length because the appropriate building soils are

located over two thousand feet (2,000') from the existing public road. The County has consistently approved similar waiver requests. Attached hereto is a summary sheet of all such applications. The Planning Commission rejected the preliminary plan, not for any valid basis, but because neighboring property owners objected to any cluster development at all. L & J Property respectfully requests that the Board approve the cul-de-sac length waiver and approve the preliminary plat as allowed by Zoning Ordinance § 2-406(6).

### **FACTS**

On August 15<sup>th</sup>, 2006, L & J, as owner and applicant, submitted an original preliminary cluster subdivision plan and cul-de-sac length waiver for the development of a subdivision on a parcel identified as Parcel Identification Number (PIN) 7012-73-5993-000 in Scott Magisterial District of Fauquier County, known as Virginia Pines. L & J's preliminary subdivision plan sought the approval of a subdivision of 204.7224 acres into a cluster of six (6) lots, with one (1) large residue lot of 174.68 acres to be dedicated to "non-common open space." The Virginia Pines preliminary subdivision plat depicts lots to be developed according to a "by-right" density within the Rural Agriculture (RA) zoning districts and follows the rules that require that smaller lots to be clustered on fifteen percent (15%) of the gross property acreage, with the remaining eighty-five percent (85%) of the gross property acreage being dedicated to non-common open space. A copy of the statements of justification, the application, the preliminary subdivision plat, and all other required submission documents are attached hereto.

Thereafter, the Planning Commission took up the preliminary subdivision plat for consideration on September 28<sup>th</sup>, 2006. On September 28<sup>th</sup>, 2006, L & J deferred decision on the preliminary subdivision plat until the next scheduled meeting of the Fauquier County Planning Commission on October 26<sup>th</sup>, 2006 to allow the Scott District Planning Commissioner and staff ample time to resolve issues raised by the adjoining property owners of Virginia Pines. In fact this deferral was made at the behest of the Scott District Planning Commissioner. The issues raised by the property owners were not related to any specific ordinance requirements.

Subsequently, the Planning Commission took up the preliminary subdivision plan for consideration once again on October 26<sup>th</sup>, 2006. On October 26<sup>th</sup>, 2006 the Planning Commission, at its regular meeting, deferred action on the preliminary subdivision plan until the next regularly scheduled Planning Commission meeting on November 30<sup>th</sup>, 2006 to allow suitable time for the Scott District Planning Commissioner and staff to meet with the adjoining property owners to address their concerns and issues. A representative of the applicant (Chuck A. Floyd) was asked to attend the meeting with staff, the Scott District Planning Commissioner, and the adjoining property owners. Mr. Floyd was asked by the Scott District Planning Commissioner to provide alternative subdivision designs so they could be discussed at the aforementioned meeting.

Thereafter, on November 14<sup>th</sup>, 2006 a meeting with the adjoining property owners, staff, the Scott District Planning Commissioner, and Mr. Floyd was held at 32 Pelham Street, Warrenton, Virginia 20186 to discuss the preliminary subdivision plat and the neighbor's concerns. Mr. Floyd and his firm (Carson Ashley and Associates, LLC) provided two (2) alternative subdivision layouts that were also discussed at this meeting. The two (2) alternative layouts provided by Mr. Floyd at this time were for discussion purposes only, and these layouts were not to be construed as viable options for subdivision. The alternative layouts showed lots located so as not to require a waiver of the 700-foot cul-de-sac standard, however the lots shown on said layouts were located on unbuildable soils.

Subsequently, the Planning Commission denied the preliminary subdivision plat at its November 30<sup>th</sup>, 2006. At that meeting, L & J's representative (Mr. Floyd) and counsel were provided the grounds for denial that the Planning Commission had prepared and distributed in advance, just prior to the Planning Commission's 10:00 A.M. Work Session. Therefore, the applicant was not provided suitable time to refute and rebut the nine (9) denial reasons provided by the Planning Commission.

We have provided below the exact denial resolution provided by staff and the Planning Commission followed by a precise point by point refutation and rebuttal of the denial reasons:

1. Section 4-27 of the Fauquier County Subdivision Ordinance states "whenever because of unusual size, topography, or shape of the property or other unusual condition not resulting from the developers deliberate act, a strict compliance with the requirements of this Ordinance would result in extraordinary hardship to the developer, or wherever standards for waiver of specific provision of this Ordinance by the Planning Commission are set forth, the Planning Commission may vary, modify or waive the requirements so that substantial justice may be done and the public interest secured; provided that such variance, modification, or waiver will not have the effect of nullifying the intent and purpose of these regulations or interfering with implementing the Comprehensive Plan of Fauquier County." The applicant has not demonstrated that the size, topography or shape of the property prohibits strict compliance with the Ordinance and/or creates extraordinary hardship to the developer. Therefore, the Planning Commission does not approve the cul-de-sac length waiver and the applicant shall revise the plat to meet Section 5-8 of the Fauquier County Subdivision Ordinance requires "cul-de-sacs not to exceed 700 feet in length, exclusive of the turnaround." The applicant is proposing a cul-de-sac of approximately 2,400 feet. The proposed cul-de-sac should be reduced to 700 feet in length.

*RESPONSE: The applicant has demonstrated in their statement of justification (copy attached) that the cul-de-sac length is necessary based upon the location of suitable soils for drainfields. Those soils are located in the center of the property*

*a direct distance of 1,800 feet from Bull Run Mountain Road. Soils are a function of topography as such the reason for requesting the waiver is related to the topography of the property. In fact, the County Soil Scientist recommended the lots be located in the area of the suitable soils; the applicant complied with this request in designing the preliminary plat. The applicant also requested the waiver in order to preserve the frontage of Bull Run Mountain Road, because a subdivision that strips out lots along Bull Run Mountain Road is not compatible with the surrounding neighborhood. The soils within 700 feet of Bull Run Mountain Road are not buildable soils. Refusal to grant the cul-de-sac length waiver creates an extraordinary hardship in that no other part of the property is developable as a cluster subdivision.*

*Attached please find a chart which outlines the Planning Commission's action on cul-de-sac length waivers from March of 2005 until the present time. It is important to note of the thirteen (13) waiver requests this is the only waiver request that has been denied. Of the twelve (12) that were approved 2 were approved based upon frontage and location of drainfields and one of those approvals was for a cul-de-sac length of 2,000 LF. Another waiver request was approved to protect the visual impact of the lots to an existing neighborhood. It is important to note that in two cases, no reasons were given for requesting the cul-de-sac length waiver, and in one case the applicant did not even submit a statement of justification and the waiver was approved. The Planning Commission has arbitrarily and capriciously denied the request for a cul-de-sac length waiver solely because of the objections of the neighbors to this subdivision. The Commission has a history of approving these waivers. We therefore request the Board of Supervisors reconsider the request for a waiver of the cul-de-sac length and grant said waiver.*

2. Section 7-10 of the Fauquier County Subdivision Ordinance requires "grades of streets submitted on subdivision plat shall be approved by the Virginia Highway Department Engineer prior to final action by the agent for the Fauquier County Board of Supervisors and shall be in accordance with the road designs and standards of Fauquier County. Where the grade of any street exceeds 5% and on grades of less than 5% where soil conditions and the general topography make such necessary as determined by the governing body or its agent in conjunction with the engineer for the Virginia Department of Transportation, paved roadside ditches of a design satisfactory to meet the standards set forth in the Subdivision Ordinance and the Virginia Department of Transportation standards shall be required." Demonstrate this road can be approved by the Virginia Highway Department Engineer with paved roadside ditches of a design satisfactory to meet referenced standards.

**RESPONSE:** *Section 9-5 of the Subdivision Ordinance outlines the submission requirements for a Preliminary Plan. There are 33 requirements listed in this*

*section, none which require road design. Section 9-12 states "Following official notification to the subdivider of the Commission's recommendations on the preliminary plat..., the plans, profiles and specifications for all required public or private improvements to be installed shall be prepared by a person or firm licensed in Virginia to prepare such plans in accordance with agency requirements and Section 10-5 of this Ordinance and submitted to the agent for the governing body. Section 10-5 outlines the Final Plat requirements. Section 7-10 quoted above states "prior to final action by the agent". Final action by the agent is the approval of the Final Plat. Therefore, this denial condition is invalid as it is imposing a condition of Final Construction Plans, which is a condition of Final Plat, at the Preliminary Plan stage.*

3. Section 5-6 of the Fauquier County Subdivision Ordinance requires that "maximum street grades permitted shall not exceed 10%. Grades in excess of 8% should be avoided. Ditches on grades 5% or more shall be paved and catch basins installed where required under the current standards of Fauquier County or the Virginia Department of Transportation. All paved ditches shall be of an approved concrete mixture." Demonstrate the street grade will not exceed 10%.

**RESPONSE:** *As with the previous denial condition, this is not a requirement of the Preliminary Plan. Grading of streets is a function of Final Construction Plans. Therefore, this denial condition is invalid as it is imposing a condition of the Final Plat at the Preliminary Plan stage. It is important to note that both the October 26 and November 30 Staff Reports contain "Proposed Conditions of Development". Condition #4 in both reports states "Road grades shall not exceed 10%" further proving road grades are not a Preliminary Plan requirement.*

4. Section 9-5(C) of the Fauquier County Subdivision Ordinance requires an approved Preliminary Soils Report as part of the Preliminary Plat application. The following items shall be corrected:
  - Drainage lines shall match the legend.
  - The proposed well locations for Lots 5 and 6 shall be moved further up the slope from the drainage way.
  - The location of the house on Lot 4 shall be moved further up the slope from the drainage way.
  - The proposed house site for Lot 2 shall be moved to the southwest, further up the nose of the ridge or closer to the cul-de-sac in the 153C3 and 153B3 map units.

- Houses shall not be located in natural drainage ways. Natural drainage ways shall be protected and left in their natural state.
- The type of primary and reserve drainfield area shall be stated for each lot.
- Areas of steep slopes shall be avoided at all costs due to high erosion hazard. Property erosion and sedimentation practices need to be installed before construction begins. Soil mapping units 33D, 33D3, 33E, 133D, 133E, 153D3, and 241D3 shall be left in their natural state.

**RESPONSE:** *A Type I Soils Map prepared by the County Soils Scientist has been provided with the Preliminary Plan as required. The items listed above are comments provided by the County Soils Scientist regarding the graphical representation of the information shown on the Type I Soils Map. One of the comments is regarding the way a line type is represented by Computer Aided Drafting (CAD). The other comments relate to apparent problems with the location of the “proposed” houses and wells. As the locations of the houses and wells are “preliminary” the comments are properly addressed with the final construction plans. The drainfield scientist will provide the “final” well locations and the types of drainfields as well as the location of the primary and reserve once the drainfield is designed. At the preliminary plan stage, the drainfield scientist has staked the location of the drainfield and has not specified the information requested above. The above denial condition is invalid as it does not represent any requirements as listed in Section 9-5 of the Subdivision Ordinance and pertains to information required on the Final Construction Plan.*

5. The applicant shall obtain approval from the Virginia Department of Transportation prior to Planning Commission approval pursuant to Section 9-6 of the Subdivision Ordinance. Corrections include, but are not limited to the following items:
  - Offset of the cul-de-sac shall be dimensioned.
  - Curve data shall be provided for the centerline of Evelyn Avenue.
  - Sheet 5 needs to label the area north of Evelyn Avenue as subject to boundary line adjustment.
  - All culverts, including driveway culverts, shall be designed to pass the 10-year storm.
  - The intersection of Evelyn Avenue and Bull Run Mountain Road shall meet the County’s IL-1 standard for intersections.

**RESPONSE:** *The Virginia Department of Transportation (VDOT) does not approve a Preliminary Plan based on this section of the Ordinance. VDOT's response to us was "Our office has been asked to provide comments on the above reference preliminary plan, but any approval or disapproval of that plan lies with the County Planning Commission and Board of Supervisors" (see attached portion of "Laurenwood" email). Since VDOT does not approve Preliminary Plans this denial condition is invalid. Also, the denial reasons listed above are not preliminary plan requirements and are design requirements associated with the Final Construction Plans.*

6. Article 2-309 of the Fauquier County Zoning Ordinance requires "the Commission shall have the authority to determine whether lands qualify as open space." It appears that rock outcroppings, steep slopes and highly erodible soils are included within the proposed cluster lots. Revise the lot layout to include these features in the non-common open space lot.

**RESPONSE:** *Article 2-309.6 states "In the administration of these provisions, the Commission shall have the authority to determine whether lands qualify as open space." Those provisions are outlined in Article 2-309.1 thru 2-309.5 and are paraphrased as follows:*

*2-309.1 – Lands needed by the County for school sites, parks, etc. for which full credit can be given to satisfy the open space requirement if approved by the Commission.*

*2-309.2 – Lands not needed by the County can be conveyed to a non-profit origination or individual can be given to satisfy the open space requirement if approved by the Commission.*

*2-309.3 – Open space requirements outside the floodplain and dimension requirements.*

*2-309.4 – Open space within major utility easements.*

*2-309.5 – Land within or reserved for right-of-way shall not be counted as open space.*

*No where in 2-309 does it state the Planning Commission has the authority to determine whether lands qualify as open space if they do not contain rock outcroppings, steep slopes or highly erodible soils. Therefore, this denial condition is invalid.*

*Article 2-406.5A(1) identifies the standards for evaluating whether the proposed development will impact the natural resources and what should be considered when identifying the natural resources to be preserved. Article 2-406.5A(2) states "Natural features will in included in open space unless the Board finds in doing so would not be appropriate to the site or would not allow the applicant to develop 50% of the otherwise allowable site density." Fifty-six percent, or*

*seventeen (17) acres, of the proposed development site is composed of the type 153 soils series which is the best soil on the site for development using drainfield systems. By imposing the above condition, it in effect reduces the allowable site density to zero as the entire site would be required to be encompassed in the open space. The alternative layouts requested by the Planning Commission are entirely composed of steep slopes, erodible soils, rock outcroppings and floodplain as well and therefore cannot meet this condition. The applicant therefore requests that based upon article 2-406.5A(2) that the Board find the Planning Commissions request be deemed inappropriate to the site and allow the lot layout to remain as proposed..*

7. The application fails to satisfy the requirements of the provisions of the Zoning Ordinance outlined in Article 1-200 (1-15). This provision states that the Ordinance is intended to promote the health, safety and general welfare of the public; and to implement the adopted Comprehensive Plan for the orderly and controlled development of the County. It states the Ordinance is designed to create and maintain conditions under which people and their environment can exist in a productive and enjoyable harmony while fulfilling the social, economic and other requirements of present and future generations. Furthermore, the Ordinance is to facilitate the creation of a convenient, attractive and harmonious community, promote the conservation of natural resources and to ensure that development in such areas is well-controlled. Provide a Preliminary Plat with (a) a 700 foot cul-de-sac that meets the grade requirements for proposed streets outlined in the Subdivision Ordinance, (b) the Large Lot option as outlined in the Fauquier County Zoning and Subdivision Ordinances, or (c) with all lots having direct access to Route 629, Bull Run Mountain Road.

**RESPONSE:** *The applicants have provided a Preliminary Plan which meets the Ordinance requirements with the exception of the cul-de-sac length for which the applicant has requested a waiver. The Planning Commission has arbitrarily denied the cul-de-sac length waiver request based upon the concerns of the neighbors and in an attempt to force a large lot subdivision on the applicants. The Planning Commission has previously approved this type of waiver request on other subdivisions. The other options requested by the Planning Commission are unbuildable and should have been evaluated by staff prior to the Commission rejecting the application and requesting we submit one of the alternatives. The large lot option is irrelevant as it does not go to the Planning Commission. The applicant believes this denial condition is invalid as it requests the applicant provide an alternative preliminary plan which will not meet the ordinance requirements and will be rejected by County staff as being unbuildable.*

8. Article 2-406 (5)(B) of the Zoning Ordinance states the Board shall take into account any scenic and/or historic resources that would be impacted by the development and may require that adverse impacts be mitigated. Furthermore,

the Ordinance states site improvements including streets and lots shall take advantage of topography so as to mitigate adverse visual impacts and maintain, to the extent possible, the scenic qualities. Demonstrate the street grade will take advantage of the topography and not exceed 10%.

***RESPONSE:*** *As previously stated, demonstration that the street grade will be 10% is a function of the Final Construction Plans and is not a Preliminary Plan requirement. This denial condition is invalid.*

9. It is not clear that the applicant will be able to obtain the necessary off-site easements for the construction of the proposed road. Provide a letter of intent to grant the easements or some similar document indicating the willingness of these property owners to allow this easement.

***RESPONSE:*** *Proof of off-site easements is not a function of preliminary plan approval. No off-site easements will be necessary as the road when graded will be situated to ensure all grading take place on-site. This denial condition is invalid as proof of easements is not a Preliminary Plan requirement*

The action of the Planning Commission in disapproving the preliminary subdivision plan was not properly based on the ordinances applicable thereto, exceeding the scope of the Planning Commission's authority, and was arbitrary and capricious based on the detailed refutation provided above.

L & J has provided a preliminary subdivision plat that complies with Section 9-5 (Preliminary Plan Requirements) of the Fauquier County Subdivision Ordinance. The Planning Commission, while referring to, and incorporating by reference the proposed grounds for denial has not addressed the arguments contained therein. The Planning Commission has based their denial on reasons that are not applicable to preliminary subdivision plans as outlined in the Fauquier County Subdivision and Zoning Ordinances. It should be noted that all the reasons for denial referred to by the Planning Commission were contained within "Proposed Conditions of Development" provided within both the September 28<sup>th</sup> and October 26<sup>th</sup>, 2006, Planning Commission Staff Reports, therefore, establishing that they are not preliminary subdivision plan requirements.

Board of Supervisors of  
Fauquier County, Virginia  
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Therefore, L & J respectfully requests that the Board of Supervisors overrule the Planning Commission and approve the applicant's preliminary subdivision plat for Virginia Pines, as well as approve the necessary cul-de-sac length waiver.

Sincerely,

Merle W. Fallon

MWF/sd

Attachments

cc: L & J Property, LLC  
Carson-Ashley

VDOT Email

**From:** Yeatman, Kimberly M. [mailto:Kim.Yeatman@VDOT.Virginia.gov]

**Sent:** Monday, April 17, 2006 11:40 AM

**To:** 'acrawford@fmmgllp.com'

**Cc:** 'Meade, Holly'; Amy Pritchard; Shifflett, Darryl W.; Cabbage, James D. L.S.

**Subject:** RE: Laurenwood

All of preliminary plans, construction plans and site plans that are received by our office, are reviewed using the VDOT Land Development Manual, the 2005 Subdivision Street Requirement Manual and Road Design Manual, Minimum Standard of Entrances to State Highways, Drainage Manual, Road and Bridge Standards, Road and Bridge Specifications, and various other industry manuals. Our office has been asked to provide comments on the above referenced preliminary plan, but any approval or disapproval of that plan lies with the County Planning Commission and Board of Supervisors. Please see below for responses to the items addressed: